

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY HARDEMAN and TENNESSEE VALLEY AUTHORITY,
SEQUOYAH NUCLEAR PLANT, Soddy-Daisy, TN

*Docket No. 00-9; Submitted on the Record;
Issued May 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on March 24, 1994 causally related to his accepted August 8, 1988 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability.

On August 20, 1988 appellant, then a 26-year-old nuclear plant laborer, filed a traumatic injury claim alleging that on August 8, 1988 he experienced back pain while removing bags of clean laundry weighing 35 to 40 pounds from a bin. Appellant stopped work on August 9, 1988 and did not return.¹

By letter dated September 21, 1988, the Office of Workers' Compensation Programs accepted appellant's claim for low back strain. Subsequently, the Office accepted appellant's claim for a herniated nucleus pulposus at L5-S1 and back surgery involving the excision of the disc at L5-S1.

The Office referred appellant to a vocational rehabilitation counselor, who identified the positions of cushion builder and upholsterer/assembly line worker as being within appellant's physical capabilities and available in appellant's local area.

By decision dated March 8, 1994, the Office reduced appellant's compensation on the grounds that the position of cushion builder fairly and reasonably represented appellant's wage-earning capacity. On May 20, 1994 appellant requested reconsideration of the Office's decision.

¹ The record reveals that appellant was terminated by the employing establishment on September 19, 1988 due to a lack of available work.

In a June 28, 1994 decision, the Office denied appellant's request for modification based on a merit review of the claim.

On October 28, 1996 appellant filed a recurrence of disability. Appellant indicated that the medicine he took "messed" up his stomach and caused a bleeding ulcer, anxiety and bad nervous problems. Appellant further indicated that his pay stopped on March 24, 1994.

By letter dated December 10, 1996, the Office advised appellant to submit medical evidence supportive of his claim. Appellant did not respond.

By decision dated January 30, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on March 24, 1994 causally related to his August 8, 1988 employment injury. On May 9, 1997 appellant requested reconsideration of the Office's decision.

In a May 19, 1998 decision, the Office denied appellant's request for modification based on a merit review of the claim. On December 29, 1998 appellant again requested reconsideration.

By decision dated March 15, 1999, the Office denied appellant's request for reconsideration without a review of the merits on the grounds that the evidence submitted was of a repetitious nature and thus insufficient to warrant review of the prior decision. In a May 17, 1999 letter, appellant requested reconsideration and submitted additional evidence.² In a decision dated July 13, 1999, the Office denied appellant's request for modification based on a merit review.³

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁴

In this case, appellant has not submitted rationalized medical evidence establishing that his current back and emotional conditions were caused by the accepted August 8, 1988 employment injury. Appellant submitted medical evidence that predates his alleged recurrence of disability. Further, appellant submitted medical evidence that failed to address whether his current back condition was caused by his accepted employment injury.

² Dr. James G. White completed a questionnaire, in which he indicated that appellant was not disabled.

³ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

⁴ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

The notes regarding appellant's treatment, which were signed by Carolyn Williams and Tomesa Johnson for Dr. Robert L. Sendele, a Board-certified orthopedic surgeon, do not constitute competent medical evidence inasmuch as the record does not indicate that they are physicians.⁵ The treatment notes and reports of appellant's physical therapists concerning his back treatment are of no probative value inasmuch as a physical therapist is not a physician under the Federal Employees' Compensation Act⁶ and, therefore, is not competent to give a medical opinion.⁷ Similarly, the treatment notes of appellant's nurse are of no probative value because a nurse is not a physician under the Act.⁸

Appellant submitted medical reports from Dr. Steven H. Sanders, a licensed psychologist, concerning his emotional condition. Appellant's prior employment-related injury would be considered a compensable employment factor under the Act.⁹

Dr. Sanders' November 12, 1997 report provided a history of appellant's August 8, 1988 employment injury, medical and psychological treatment and social and family background, as well as his findings on clinical and psychological examination. Dr. Sanders diagnosed chronic low back pain that was work related and chronic cervical pain that was not work related with some myofascial and secondary nerve fiber irritation. He also diagnosed severe pain disorder with psychological factors, a medical condition and depression, which appeared to be related to appellant's work injury. However, Dr. Sanders failed to provide any medical rationale to support his opinion regarding the causal relationship between appellant's emotional condition and his August 8, 1988 employment injury.

Because appellant has failed to submit rationalized medical evidence establishing that his current conditions were causally related to his accepted August 8, 1988 employment injury, the Board finds that appellant has not satisfied his burden of proof.

⁵ *Diane Williams*, 47 ECAB 613 (1996).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983); 5 U.S.C. § 8101(2).

⁸ See *Bertha L. Arnold*, 38 ECAB 282 (1986); 5 U.S.C. § 8101(2).

⁹ See *Arnold A. Alley*, 44 ECAB 912 (1993).

The March 15, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 21, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member